

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ERIC WILLIAMS, §
Petitioner, §
§
v. § CIVIL ACTION NO. 3:20-cv-3030-N
BOBBY LUMPKIN, Director, § (Death Penalty Case)
Texas Department of Criminal
Justice, Correctional Institutions
Division,
Respondent. §

**RESPONDENT LUMPKIN'S SECOND UNOPPOSED
MOTION TO EXTEND TIME TO FILE ANSWER**

Respondent, Director Bobby Lumpkin, respectfully requests an extension of 90 days to the present deadline for filing the Director's answer in this capital habeas case. If the request is granted, the answer will be due January 5, 2023. The Director has previously asked for one prior extension of time, and the present request is not sought for any improper purpose, including harassment or unnecessary delay. As reflected in the certificate of conference, this extension request is not opposed. In support of the motion, the Director would show the following:

This is a capital case. Petitioner Eric Williams filed his amended petition for writ of habeas corpus on March 14, 2022, about 15 months after his present counsel were appointed. Am. Pet. Writ of Habeas Corpus, ECF No. 76; Order App't Co-Counsel, ECF No. 17. The Director's response to the amended petition is presently due October 7, 2022, after an initial extension. The Director seeks

an additional 90 days to respond to the amended petition on or before January 5, 2023.

The requested 90-day extension of time is necessary due to the size of the record and undersigned's other responsibilities and litigation. As to the record's size, the state-court record includes: (1) the clerk's record, containing 14 volumes (11 original and 3 supplemental); (2) the reporter's record, containing 60 volumes, including over 600 exhibits; (3) the state habeas clerk's record, containing 11 volumes (9 original and 2 supplemental); and (4) the state habeas reporter's record, containing 90 volumes, including over 250 exhibits. On top of that record is Williams's 180-page petition with some 55 exhibits attached. Am. Pet. Writ of Habeas Corpus, ECF No. 76; App'x, ECF Nos. 77 to 77-5. The undersigned has endeavored to read all this material and process it but has not been able to in the current time allotted.

As to the undersigned's other work, he is a supervisor of multiple capital habeas attorneys, a special appellate attorney to his office's trial prosecutors, and maintains a full capital caseload. These first two positions add administrative, review, and advisory responsibilities on top of the undersigned's own case work. Since the Director's latest extension, that work includes:

- *Mullis v. Lumpkin*, No. 21-70008 in the United States Court of Appeals for the Fifth Circuit, supplemental appellee brief filed on July 15, 2022;

- *State v. Ocker*, No. CR-20-0675-B in the 22nd Judicial District Court of Hays County, Texas, appearing as lead counsel at hearings on a request for a court of inquiry on July 21 and July 25, 2022;
- *Chapa v. State*, No. 13-21-00313-CR in the Thirteenth Court of Appeals of Texas, State's brief filed on July 22, 2022;
- *Tong v. Lumpkin*, No. H-10-2355 in the United States District Court for the Southern District of Texas, motion to enter judgment and terminate remand proceeding filed on August 11, 2022;
- *State v. Ocker*, No. 22-1314CR-1 in the County Court at Law #3 of Hays County, Texas, appearing as lead counsel at a motion to dismiss for prosecutorial vindictiveness on August 29, 2022;
- *Tong v. Lumpkin*, No. H-10-2355 in the United States District Court for the Southern District of Texas, motion to enter judgment and terminate remand proceeding reply filed on September 7, 2022; and
- *Tong v. Lumpkin*, No. H-10-2355 in the United States District Court for the Southern District of Texas, exhaustion stay opposition filed on September 30, 2022;

In this same period, the undersigned has also reviewed dozens of filings, including multiple capital habeas answers (one of which was more than 400 pages), numerous other capital habeas motions and responses, and a variety of state court pleadings and briefs. The undersigned has also participated in multiple moot courts and otherwise assisted in preparing attorneys for oral argument, including a case soon to be argued in the Supreme Court. Finally, the undersigned has further provided dozens of answers to various inquiries from trial prosecutors (many in cases where the State is seeking a death sentence). Moreover, at the present, the undersigned has four answers due in the span of a month in capital habeas cases (three in federal court and one in

state court). The undersigned has completed one (*Ex parte Gonzales*) and hopes to complete another (*Tong*) before getting married next week and taking a honeymoon. In sum, the undersigned is diligently working to accomplish all the tasks before him.

To be sure, the undersigned prioritizes his work in this Court. The bulk of time attending to other cases has primarily been spent on those where a death sentence has been obtained or where one is being sought. As to the federal habeas cases listed above, all have been pending longer than this case. And one of the state court cases listed above was particularly important given allegations of felonious conduct leveled at prosecutors. In short, the undersigned has mostly worked on cases in higher courts, those older than this one, or where imminent deadlines occurred in cases moving towards trial. This work has prevented the undersigned from completing a thorough and helpful answer, so the undersigned respectfully asks for more time to complete that task.

CONCLUSION

For the reasons above, the Director respectfully asks for a 90-day extension of time to file his answer on or before January 5, 2023.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I certify that I conferred with Williams's counsel, Bruce Anton and Meg Penrose, about this motion and they stated that they were unopposed to it.

/s/ Matthew Ottoway
MATTHEW OTTOWAY
Assistant Attorney General

CERTIFICATE OF SERVICE

I do hereby certify that on October 3, 2022, I electronically filed the foregoing pleading with the Clerk of the Court for the U.S. District Court, Northern District of Texas, using the electronic case-filing system of the Court. The electronic case-filing system sent a “Notice of Electronic Filing” (NEF) to the following counsel of record, who consented in writing to accept the NEF as service of this document by electronic means:

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